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Norris, McLaughlin & Marcus, P.A.
875 Third Avenue, 18th Floor
New York, NY 10022

In re Application of
Quellet et al.
Application No. 10/502,476
PCT No.: PCT/CH03/00046
Int. Filing Date: 22 January 2003
Priority Date: 31 January 2002
Atty. Docket No.: 102790-176/30046 US/2
For: Granulated Composition

COMMUNICATION

This is in response to the declaration of the inventors filed on 04 April 2005, which is being treated under 37 CFR 1.42.

BACKGROUND

This international application was filed on 22 January 2003, claimed an earliest priority date of 31 January 2002, and designated the U.S. The International Bureau communicated a copy of the published international application to the USPTO on 07 August 2003. The 30 month time period for paying the basic national fee in the United States expired at midnight on 02 August 2004 (since 31 July 2004 was a Saturday). Applicants filed, *inter alia*, the basic national fee on 23 July 2004.

On 28 January 2005, a Notification of Missing Requirements (Form PCT/DO/EO/905) was mailed to applicants, requiring the filing of an executed oath or declaration, a surcharge under 37 CFR 1.492(e), an initial or substitute computer readable form ("CRF") of the "Sequence Listing," an initial or substitute paper copy or compact disc of the "Sequence Listing," as well as an amendment directing its entry into the specification.

DISCUSSION

Review of the declaration of the inventors filed on 04 April 2005 reveals that joint inventor Gerald Leslie Hart is indicated to be a deceased inventor and that Susan Hart has signed on his behalf. 37 CFR 1.42 provides in part that

In case of the death of the inventor, the legal representative (executor, administrator, etc.) of the deceased inventor may make the necessary oath or declaration, and apply for and obtain the patent.

Meanwhile, 37 CFR 1.497(b)(2), as amended effective 08 September 2000, provides that

If the person making the oath or declaration is not the inventor (§§ 1.42, 1.43 or 1.47), the oath or declaration shall state the relationship of the person to the inventor, and, upon information and belief, the facts which the inventor would have been required to state. If the person signing the oath or declaration is the

legal representative of a deceased inventor, the oath or declaration shall also state that the person is a legal representative and the citizenship, residence and mailing address of the legal representative.

Further examination of the declaration reveals that it states that Susan Hart is the "Executrix" of deceased inventor Gerald Leslie Hart. Furthermore, the declaration properly includes "the facts which the inventor would have been required to state, and also includes the "citizenship, residence and mailing address of the legal representative" as required under 37 CFR 1.497(b)(2). For these reasons, it would be appropriate to accept the declaration of the inventors under 37 CFR 1.42 at this time.

With regard to the "Communication" filed on 11 April 2005, counsel states that the Notification of Missing Requirements mailed on 28 January 2005 was "in error, as the application did not include a Sequence Listing." Review of the application file reveals no indication that a sequence listing was intended to form a part of the instant application. As such, the requirements set by the Form PCT/DO/EO/905 for the submission of an initial or substitute computer readable form ("CRF") of the "Sequence Listing," an initial or substitute paper copy or compact disc of the "Sequence Listing," as well as an amendment directing its entry into the specification, were in error, and those requirements are hereby withdrawn.

CONCLUSION

The declaration is **ACCEPTED** under 37 CFR 1.42.

This application is being forwarded to the National Stage Processing Branch for further processing. Its date under 35 U.S.C. 371(c)(1), (2) and (4) is **04 April 2005**.



Boris Milef
PCT Legal Examiner
PCT Legal Office



George M. Dombroske
PCT Legal Examiner
PCT Legal Office
Tel: (571) 272-3283
Fax: (571) 273-0459